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KERALA GAZETTE

EXTRAORDINARY

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NOTIFICATION.

L. A. 4-3134/1958. *24th November 1958.*

The following Bills together with the Statement of Objects and Reasons and the Financial Memorandum attached to it, is published, as ordered by the Speaker under Rule 73 of the Rules of Procedure and Conduct of Business in the Assembly.

1. The Kerala Weights and Measures Enforcement (No. 2) Bill, 1958 (L. A. Bill No. 42 of 1958).
2. The Kerala Land Acquisition Bill, 1958 (L. A. Bill No. 43 of 1958).

Legislature Secretariat,
Trivandrum.

V. KRISHNAMOORTHI,
Secretary,
Legislative Assembly.

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THE KERALA WEIGHTS AND MEASURES ENFORCEMENT (No. 2) BILL, 1958.

A

BILL

to provide for the enforcement of standard weights and measures and for matters connected therewith.

Preamble.—WHEREAS it is necessary to provide for the enforcement of standard weights and measures and for matters connected therewith;

BE it enacted in the Ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Weights and Measures (Enforcement) Act, 1958.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint; and different dates may be appointed for different provisions of this Act or for different areas or for different classes of undertaking or for different classes of goods.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "commercial weight or measure" means a weight or measure purporting to be a standard weight or measure used in any transaction for trade or commerce;

(b) "Controller" means the Controller of Weights and Measures appointed under sub-section (1) of section 15 or any other officer empowered by the Government to exercise the powers and discharge the duties conferred or imposed on the Controller by or under this Act;

(c) "Inspector" means an Inspector of Weights and Measures appointed under sub-section (1) of section 15 or any other officer empowered by the Government to exercise the powers and discharge the duties conferred or imposed on an Inspector by or under this Act;

(d) "measuring instrument" means any measuring instrument other than a weighing instrument and includes any instrument for measuring length, area, volume or capacity;

(e) "mint" means the mint of the Central Government either in Bombay or in Calcutta;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "reference standards" means the sets of standard weights and measures supplied to the Government by the Central Government in pursuance of sub-section (2) of section 15 of the Standards of Weights and Measures Act, 1956;

(h) "stamping" means marking in such manner as to be, so far as practicable, indelible and includes casting, engraving, etching and branding;

(i) "standard weight or measure" means any unit of mass or measure referred to in sub-section (1) of section 13 of the Standards of Weights and Measures Act, 1956 and includes any other weight or measure the continuance of the use of which is permitted by the Central Government under sub-section (1) of section 14 of the said Act;

(j) "verification" with its grammatical variations, used with reference to a weight or measure or weighing or measuring instrument, includes the process of comparing, checking or testing such weight or measure or weighing or measuring instrument and also includes reverification;

(k) "weighing instrument" means any instrument for weighing and includes scales with the weights belonging thereto, scale-beams, balances, spring balances, steel yards and other weighing machines.

Chapter II

STANDARD WEIGHTS AND MEASURES

3. *Working standards.*—(1) For the purpose of verifying the correctness of commercial weights and measures and weighing and measuring instruments used in transactions for trade or commerce, the Government may cause to be prepared as many sets of authenticated standard weights and measures as they may deem necessary to be called the working standards, and special sets of working standards in relation to bullion and precious stones may also be prepared.

(2) The working standards shall be made of such material and according to such designs and specifications and shall be prepared by such agency and shall be stamped and authenticated by such person or authority and in such manner as may be prescribed.

(3) The working standards shall be kept at such places, in such custody and in such manner as may be prescribed.

(4) A working standard shall be verified with the secondary standard and marked by such persons, at such places, at such intervals and in such manner as may be prescribed:

Provided that a special working standard in relation to bullion and precious stones shall be verified with the reference standard.

(5) A working standard which is not so verified and marked within the prescribed period shall not be deemed legal or be used for the purposes of this Act.

(6) A working standard which has become defective shall not be deemed legal or be used for the purposes of this Act until it has been verified and marked in the prescribed manner.

4. *Secondary standards.*—(1) For the purpose of verifying the correctness of the working standards, the Government may cause to be prepared at the mint as many sets of authenticated standard weights and measures as they may deem necessary to be called the secondary standards.

(2) The secondary standards shall be made of such material and according to such designs and specifications as may be prescribed and shall be stamped and authenticated by such person or authority as the Central Government may direct.

(3) The secondary standards shall be kept at such places, in such custody and in such manner as may be prescribed.

(4) A secondary standard shall be verified with the reference standard at least once in every period of five years and shall be marked with the date of verification in the prescribed manner by such person or authority as the Government may direct.

(5) A secondary standard which is not so verified and marked within the aforesaid period shall not be deemed legal or be used for the purposes of this Act.

5. *Reference standards.*—The reference standards shall be kept at such places, in such custody and in such manner as the Government may direct.

6. *Standard weighing and measuring instruments.*—(1) For the purpose of verifying the correctness of commercial weights and measures and of weighing and measuring instruments used in transactions for trade or commerce, the Government may cause to be prepared as many sets of weighing and measuring instruments as they may deem necessary.

(2) Such instruments shall be of such kind, kept in such number and shall be verified and stamped in such manner as may be prescribed.

(3) Such instruments shall be kept at all places where secondary standards or working standards are kept.

7. *Prohibition of use of weights and measures other than standard weights and measures.*—(1) Notwithstanding anything contained in any other law or any custom, usage or practice, no unit of mass or measure, other than the standard weight or measure, shall be used in any transaction for trade or commerce, or in any dealing or contract, or for any work to be done, or goods to be sold or delivered in any area or class of goods or undertakings, in respect of which this Section has come into force.

(2) Any custom, usage, practice or method of whatever nature which permits in any trade a trader, seller or buyer to demand, receive or cause to be demanded or received any quantity of article in excess of or less than the quantity fixed by the weight or measure by which the contract or dealing in respect of the said article has been made, shall be void.

(3) Any transaction, dealing or contract made or had after the expiry of three months from the commencement of this Section shall, in so far as it contravenes the provisions of sub-section (1), be void.

8. *Power to prescribe the use of weights only, or measures only, in certain cases.*—(1) Notwithstanding anything contained in this Act, the Government may, by notification in the Gazette, direct that in any specified trade or class of trades no transaction dealing or contract shall be made or had except by weight only, or except by measure only.

(2) A notification issued under this section shall take effect in such area, with effect from such date, and subject to such conditions, if any, as may be specified therein.

Chapter III

VERIFICATION AND STAMPING OF WEIGHTS AND MEASURES

9. *Marking of denominations on commercial weights and measures.*—Every weight or measure manufactured for use as a commercial weight or measure shall bear the denomination of the weight or measure which it purports to be marked legibly on it in such manner as may be prescribed.

10. *Prohibition of sale of unstamped commercial weights and measures.*—No commercial weight or measure or weighing or measuring instrument shall be sold or delivered unless it has been verified or re-verified in accordance with the rules made under this Act and stamped in the prescribed manner by an Inspector with a stamp of verification.

11. *Prohibition of use of unstamped commercial weights and measures.*—No weight or measure or weighing or measuring instrument shall be used in transactions for trade or commerce unless it has been verified or re-verified in accordance with the rules made under this Act and stamped in the prescribed manner by an Inspector with a stamp of verification.

12. *Power of Government to exempt.*—Where the size of a commercial weight or measure renders it impracticable to have any denomination marked on it under the provisions of section 9 or to be stamped under the provisions of section 10 or section 11, the Government may, by notification in the Gazette, exempt such weight or measure from being so marked or stamped.

13. *Prohibition of manufacture, etc., of weights and measures without licence.*—No person shall, in course of trade, manufacture, repair or sell any commercial weight or measure or any weighing or measuring instrument unless he has obtained in the prescribed manner a licence in this behalf from the Government or any officer authorised by the Government.

14. *Marking of weight or measure in sealed containers.*—No person shall sell, offer for sale, expose for sale, or have in his possession for sale, any article contained in a sealed package or container unless such package or container bears thereon, or on a label securely attached thereto, a description of the net weight or measure of the article contained therein :

Provided that the provisions of this section shall not apply to an article sold, offered for sale exposed for sale, or in possession for sale which is not ordinarily sold in transactions for trade or commerce by weight or measure.

15. *Appointment of Controller and Inspectors.*—(1) The Government may appoint a Controller of Weights and Measures for the State of Kerala and as many Inspectors of Weights and Measures as may be necessary for exercising the powers and discharging the duties conferred or imposed on them by or under this Act.

(2) The Government may, by general or special order, define the local limits within which each Inspector shall exercise the powers and discharge the duties conferred or imposed on Inspectors by or under this Act.

(3) Subject to the provisions of this Act, all Inspectors shall perform their functions under the general superintendence and control of the Controller; and the Controller may, in addition to the powers and duties conferred or imposed on him by or under this Act, exercise any power or discharge any duty so conferred or imposed on Inspectors.

16. *Verification and stamping by Inspectors.*—(1) Every Inspector shall, for the purpose of verification of weights and measures and weighing and measuring instruments, attend at such place and time within his jurisdiction as may be appointed in this behalf by the Controller.

(2) The Inspector shall verify every weight or measure or weighing or measuring instrument which is brought to him for the purpose of verification and if he finds such weight or measure or weighing or measuring instrument correct and in conformity with the Standards of Weights and Measures Act, 1956, and the rules made thereunder, he shall stamp the same with a stamp of verification in the prescribed manner.

17. *Power to inspect etc.*—(1) An Inspector may, within the area under his jurisdiction, inspect, at all reasonable times, the weights, measures and weighing and measuring instruments which are used in transactions for trade or commerce or are in the possession of any person or are on any premises for such use and may verify every such weight or measure or weighing or measuring instrument with a secondary or working standard or weighing or measuring instrument prescribed for the purpose.

(2) For the purpose of verifying the correctness of any weight or measure used in any transaction, an Inspector may also verify the weight or measure of any article sold or delivered in the course of the transaction.

(3) An Inspector may, at all reasonable times, require any trader or any employee or agent of a trader to produce before him for inspection all weights, measures and weighing and measuring instruments which are used by him or are in his possession or are kept on any premises used for trade or commerce and all documents and records relating thereto and such trader, employee or agent shall comply with such requirements.

(4) An Inspector may seize and detain any weight or measure or weighing or measuring instrument regarding which an offence under this Act appears to have been committed or which appears to have been or which might be used in the commission of such an offence, and may also seize and detain any article sold or delivered or caused to be sold or delivered by means of such weight or measure or weighing or measuring instrument together with any documents or records relating thereto.

(5) Where an Inspector has reason to believe that a sealed package or container does not actually contain the net weight or measure of the article which it purports to contain, the Inspector may break open the sealed package or container and verify its contents; and if, on such verification, the net weight or measure of the article is found to be correct, the Inspector sh ll re-seal the package or container where it is possible so to do without injury to the contents thereof and attach a certificate thereto stating the correct weight or measure of the article; but if, on the other hand, the net weight or measure of the article is found to be incorrect, the Inspector may seize and detain the package or container and the article contained therein.

(6) For the purpose of such inspection, an Inspector may, at all reasonable times, enter into any place where weights, measures or weighing or measuring instruments are used or

kept for use in transactions for trade or commerce and inspect such weights and measures and weighing and measuring instruments.

18. *Power of Inspector to adjust weights or measures.*—Where it appears to the Government desirable that an Inspector should be allowed, in any area, to adjust the weights or measures or weighing or measuring instruments, they may, if they think fit, authorise such Inspector to adjust the weights or measures or such instruments accordingly.

19. *Manufacturers, etc., to maintain records and accounts.*— (1). Every manufacturer, repairer or dealer in weights or measures or weighing or measuring instruments and every person using them in transactions for trade or commerce shall maintain such records and accounts as may be prescribed and if required so to do by an Inspector, shall produce such records and accounts before him.

(2) Notwithstanding anything contained in sub-section (1) if the Government are of opinion that, having regard to the nature of business carried on by any such manufacturer, repairer or dealer, it is necessary so to do, they may, by order, exempt such person or class of persons from the operation of that sub-section.

20. *Appeals.*—(1) Subject to the provisions of sub-section (2), an appeal shall lie—

(a) from every decision of an Inspector under this Act to the Controller; and

(b) from every decision of the Controller under this Act, not being a decision made in appeal under clause (a), to the Government or any Officer specially authorised in this behalf by the Government.

(2) Every such appeal shall be preferred within sixty days from the date of the decision.

(3) On receipt of any such appeal, the appellate authority shall, after giving the appellant a reasonable opportunity of being heard and after making such enquiry as it deems proper, decide the appeal and the decision of the appellate authority shall be final.

21. *Levy of fees.*—The Government may charge such fees—

(a) for the grant of licences under section 13, for the manufacture, repair or sale of commercial weights and measures and weighing and measuring instruments, and

(b) for the verification, marking, stamping and adjustment of commercial weights and measures and weighing and measuring instruments,

as may be prescribed.

22. *Validity of weights and measures duly stamped.*—A weight or measure or weighing or measuring instrument duly stamped by an Inspector under this Act shall be a legal weight or measure or weighing or measuring instrument in all

places in which the relevant provisions of this Act have come into force unless it is found to be false or defective and shall not be liable to be re-stamped by reason merely of the fact that it is used in any place other than that in which it was originally stamped.

CHAPTER IV

PENALTIES.

23. *Penalty for sale or delivery by weight or measure other than standard weight or measure.*—Whoever, after the expiry of three months from the commencement of this section, sells or causes to be sold or delivers or causes to be delivered in the course of any transaction for trade or commerce any article by any denomination of weight or measure other than one of the standard weights or measures shall be punishable, for a first offence, with fine which may extend to two thousand rupees, and, for a second or subsequent offence, with imprisonment for a period which may extend to three months, or with fine, or with both.

24. *Penalty for sale of unstamped commercial weights and measures.*—Whoever sells or delivers any commercial weight or measure or any weighing or measuring instrument which has not been verified or re-verified or stamped in accordance with the provisions of this Act and the rules made thereunder shall be punishable with fine which may extend to two thousand rupees.

25. *Penalty for use of unstamped commercial weights or measures.*—Whoever uses in any transaction for trade or commerce, or has in his possession for such use, any commercial weight or measure or any weighing or measuring instrument which has not been verified or re-verified or stamped in accordance with the provisions of this Act and the rules made thereunder shall be punishable, for a first offence, with fine which may extend to two thousand rupees, and, for a second or subsequent offence with imprisonment for a period which may extend to three months, or with fine, or with both.

Explanation 1.—When any such weight or measure or weighing or measuring instrument is found in the possession of any trader or any employee or agent of such trader, such trader, employee or agent shall be presumed, until the contrary is proved, to have had it in his possession for use in transactions for trade or commerce.

Explanation 2.—Where any weight or measure or weighing or measuring instrument is used or possessed in contravention of this section by any employee or agent of a trader on behalf of such trader, such trader shall, unless he proves that the offence under this section was committed by his employee or agent without his knowledge or consent, be also deemed to be guilty of the offence.

26. *Penalty for manufacture of weights, etc., without licence.*—Whoever manufactures, repairs or sells any commercial weight or measure or weighing or measuring instrument without obtaining a licence as required by section 13, shall be punishable with imprisonment for a period which may extend to three months, or with fine, or with both.

27. *Penalty for use of weight or measure in contravention of section 8.*—Whoever contravenes any of the provisions of a notification issued under section 8 shall be punishable with fine which may extend to two thousand rupees.

28. *Penalty for failure to mark weight or measure in sealed containers.*—Whoever contravenes the provisions of section 14 shall be punishable with fine which may extend to two thousand rupees.

29. *Penalty for fraudulent use of weights, measures, etc.*—Whoever fraudulently uses any standard weight or measure or weighing or measuring instrument which he knows to be false shall be punishable with imprisonment for a period which may extend to one year, or with fine, or with both.

30. *Penalty for being in possession of false weight or measure, etc.*—Whoever is in possession of any commercial weight or measure or weighing or measuring instrument which he knows to be false, intending that the same may be fraudulently used, shall be punishable with imprisonment for a period which may extend to one year, or with fine, or with both.

31. *Penalty for making or selling false weight or measure, etc.*—Whoever makes, sells or disposes of or causes to be made, sold or disposed of any standard weight or measure or weighing or measuring instrument which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punishable with imprisonment for a period which may extend to one year, or with fine, or with both.

32. *Penalty for giving short weight or measure.*—Whoever in selling any article by weight or measure delivers or causes to be delivered to the purchaser less than what is purported to be sold shall, if the deficiency exceeds the prescribed limit of error, be punishable with fine which may extend to three hundred rupees.

33. *Penalty for forging, etc., of weights, measures, etc.*—(1) Whoever forges or counterfeits any stamp used under this Act for the stamping of any standard weight or measure or weighing or measuring instrument or possesses any such counterfeit stamp, or removes a stamp from any standard weight or measure or weighing or measuring instrument and inserts the same into another weight or measure or weighing or measuring instrument or wilfully increases or diminishes a weight or measure so stamped, shall be punishable with imprisonment for a period which may extend to one year, or with fine, or with both.

(2) Whoever knowingly uses, sells, disposes of or exposes for sale any weight or measure or weighing or measuring instrument, with such forged or counterfeit stamp thereon, or a weight or measure so increased or diminished, shall be punishable with imprisonment for a period which may extend to six months, or with fine, or with both.

34. *Penalty for neglect or refusal to produce weight or measure, etc., for inspection.*—Whoever—

(a) refuses or neglects to produce for inspection under section 17 any weight or measure or weighing or measuring instrument or any document or record relating thereto in his possession or on his premises; or

(b) refuses to permit an Inspector to inspect and verify any such weight, measure, instrument, document or record; or

(c) obstructs the entry of an Inspector under section 17; or

(d) otherwise obstructs or hinders an Inspector in the performance of his duties under this Act,

shall be punishable with fine which may extend to five hundred rupees.

35. *Penalty for breach of duty by Inspector.*—If an Inspector knowingly stamps a weight or measure or weighing or measuring instrument in contravention of the provisions of this Act or of the rules made thereunder, he shall be punishable with imprisonment for a period which may extend to one year, or with fine, or with both.

Chapter V

MISCELLANEOUS

36. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding shall lie against the Controller or any Inspector or any other person under this Act in respect of anything which is in good faith done or intended to be done in pursuance of this Act or the rules made thereunder.

37. *Controller and Inspector to be public servants.*—The Controller and the Inspectors appointed under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

38. *Cognizance of offences, etc.*—(1) No court shall take cognizance of an offence punishable under this Act except upon complaint in writing made by the Controller or any officer authorised in this behalf by the Controller by general or special order.

(2) No court inferior to that of a magistrate of the first class shall try any offence punishable under this Act.

39. *Stamped weight, etc., to be presumed to be correct.*—A weight or measure or weighing or measuring instrument duly stamped under the provisions of this Act and the rules made thereunder shall be presumed to be correct until its inaccuracy is proved, if it is produced in any court by any Inspector having charge thereof or by any person acting under the general or special authority of the Controller.

40. *Offences by companies.*—(1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section.—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

41. *Delegation of powers.*—The Government may, by notification in the Gazette, direct that any power exercisable by them under this Act or the rules made thereunder shall, in relation to such matters and subject to such conditions, as may be specified in the direction, be exercisable also by such officer or authority subordinate to the Government as may be specified in the notification.

42. *Limits of error to be tolerated in weights and measures.*—Subject to any rules that may be made under the Standards of Weights and Measures Act, 1956, in this behalf, the Government may prescribe the limits of error which may be tolerated—

(a) in working standards referred to in section 3;

(b) in secondary standards referred to in section 4;

(c) in commercial weights and measures or in selling articles by weight or measure generally or as regards any trade or class of trades; and

(d) in weighing and measuring instruments.

43. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the material of which and the designs and specifications according to which working standards may be made, the agency by which such standards may be prepared, the person by whom or the authority by which and the manner in which such standards may be stamped and authenticated; the places at which and the custody and manner in which such standards may be kept;

(b) the procedure for the verification or reverification and marking of working standards, the persons by whom, the places at which and the intervals at which they may be marked;

(c) the material of which and the designs and specifications according to which secondary standards may be made, the places at which and the custody and manner in which such standards may be kept;

(d) the procedure for the verification or reverification and marking of secondary standards and the manner in which they may be marked;

(e) the number of weighing and measuring instruments to be kept, the manner in which they may be verified and stamped and necessary particulars regarding the same;

(f) the manner in which the denomination of commercial weights and measures may be marked under section 9;

(g) the form and manner in which, and the conditions subject to which licences may be granted to persons for the manufacture, repair or sale of commercial weights and measures and weighing and measuring instruments;

(h) the qualifications, functions and duties generally of Inspectors under this Act;

(i) verification and stamping of weights and measures and weighing and measuring instruments and the period within which they are to be reverified;

(j) inspection of weights and measures and weighing and measuring instruments used in transactions for trade or commerce;

(k) the seizure, detention and disposal of weights and measures which are not authorised by this Act;

(l) the books, accounts and records relating to weights and measures and weighing and measuring instruments to be maintained and the manner in which they may be maintained or produced;

(m) the limits of error which may be tolerated in secondary or working standards;

(n) the limits of error which may be tolerated in weights and measures and weighing and measuring instruments used or intended to be used in transactions for trade or commerce;

(o) the limits of error which may be tolerated in selling articles by weights and measures generally or as regards any trade or class of trades;

(p) the form and manner in which appeals may be preferred against decisions of the Controller and the Inspectors and the procedure for hearing appeals;

(q) the fees which may be charged for the grant of licences under section 13 and for verification, reverification, adjustment and stamping of weights and measures and weighing and measuring instruments and the levy and collection of the same;

(r) the material, form and specification and manufacture and sale of commercial weights and measures and weighing and measuring instruments; and

(s) any other matter which has to be, or may be, prescribed.

(3) In making any rule under this section the Government may provide that a breach thereof shall be punishable with fine which may extend to five hundred rupees.

(4) The power to make rules under this section shall be subject to the condition of previous publication in the Gazette.

(5) All rules made under this section shall, as soon as may be after they are made, be laid before the Legislative Assembly for a period of not less than seven days and shall be subject to such modifications, by way of repeal or amendment, as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

44. *Repeal and saving.*—(1) The Madras Weights and Measures Act, 1948 (Act XXII of 1948), as in force in the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956), the Cochin Weights and Measures Act LXIII of 1112, and the Travancore Weights and Measures Act, 1085 (Act VI of 1085), are hereby repealed.

(2) The Kerala Weights and Measures (Enforcement) Ordinance, 1958 (6 of 1958), is hereby repealed.

(3) Notwithstanding the repeal of the Ordinance under sub-section (2), anything done or any action taken in the exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such think was done or action was taken.

STATEMENT OF OBJECTS AND REASONS.

In order to provide for the enforcement of standard weights and messures and for matters connected therewith, the Kerala Weights and Measures (Enforcement) Ordinance, 1958, was promulgated by the Governor on 24-9-1958. The Bill seeks to replace this Ordinance by an Act of the Legislature.

FINANCIAL MEMORANDUM.

By the adoption of the Metric System, all existing weights and measures in the Foot Pound system will be replaced by the weights and measures expressed in the Metric System. For implementing the scheme in the public sector, the total non-recurring expenditure estimated is approximately Rs. 28 lakhs, to be spent according to a phased programme spread over a period of about 10 years.

2. The Government of India have agreed to give annual grants to meet half the non-recurring expenditure of this State on this account. The non-recurring expenditure for this purpose will include the net expenditure on the organisation for enforcing weights and measures during the initial period. The Central Government will also give loans to cover the remaining half of the non-recurring expenditure.

3. The recurring expenditure for the administration of the Act will be to the tune of Rs. 1,20,000. A portion of this expenditure will be covered by the fee for licensing the manufacture and for verifying and stamping of the weights and measures.

K. R. GOURI.

THE KERALA LAND ACQUISITION BILL, 1958.

A

BILL

to unify and amend the law for acquisition of land for public purposes and for companies in the State of Kerala.

Preamble.—WHEREAS it is expedient to unify and amend the law for the acquisition of land needed for public purposes and for companies and for determining the amount of compensation to be given on account of such acquisition in the State of Kerala;

BE it enacted in the Ninth Year of the Republic of India as follows:

Part I.

PRELIMINARY.

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Land Acquisition Act, 1958.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(1) the expression 'land' includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth;

(2) the expression 'person interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;

(3) the expression 'Collector' means the Collector of the district and includes any officer appointed by the Government to perform all or any of the functions of a Collector under this Act;

(4) the expression 'company' means a company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956) and includes a foreign company within the meaning of section 591 of that Act, a society registered under the societies Registration Act, 1860 (Central Act 21 of 1860) in its application to the Malabar District as defined in section 5 (2) of the States Reorganisation Act, 1956 or under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (Act XII of 1955) and a registered society within the meaning of the Co-operative Societies Act for the time being in force;

(5) the expression 'Court' means a land acquisition court established, or any civil court invested with jurisdiction of a Land Acquisition Court, under section 57;

(6) the expression 'the Government' means, in relation to the acquisition of land for the purposes of the Union, the Central Government, and, in relation to the acquisition of land for any other purposes, the State Government;

(7) the following persons shall be deemed 'persons entitled to act' as and to the extent hereinafter provided, that is to say,—

trustees for other persons beneficially interested shall be deemed to be the persons entitled to act with reference to any such case and that to the same extent as the persons beneficially interested could have acted, if free from disability; and

the guardians of minors and the Committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted:

Provided that—

(i) no person shall be deemed 'entitled to act' whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;

(ii) in every such case the person interested may appear by a next friend, or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof;

(iii) the provisions of Order XXXII of the First Schedule to the Code of Civil Procedure, 1908, shall *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act; and

(iv) no person 'entitled to act' shall be competent to receive the compensation money, payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale.

Part II.

ACQUISITION.

Preliminary Investigation.

3. *Publication of preliminary notification and powers of officers thereupon.* (1) Whenever it appears to the Collector or any other officer authorised by the Government in this behalf that land in any locality within his jurisdiction is needed or is likely to be needed for any public purpose a notification to that effect shall be published in the Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon, it shall be lawful for any officer, either generally or specially authorised by the Collector or by the officer authorised under sub-section (1), and for his servants and workmen—

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work, if any, proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

4. *Payment for damages.*—The officer so authorised shall, at the time of such entry, pay or tender payment for any damage which may be done by the act aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector and such decision shall be final.

5. *Hearing of objections.*—(1) Any person interested in any land which has been notified under sub-section (1) of section 3, as being needed or likely to be needed for a public purpose or for a company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing and the Collector shall give the objector an opportunity of being heard either in person or by counsel and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the Government or such officer authorised by the Government in that behalf, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the Government or the officer so authorised by the Government on the objections shall be final.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

Declaration of Intended Acquisition.

6. *Declaration that land is required for public purpose.*—(1) Subject to the provisions of Part VII of this Act, when the Government or the officer authorised to decide objections under section 5 (2) are, or is, satisfied after considering the report, if any, made under sub-section (2) of section 5, that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of an officor competent to authenticate the orders of the Government or under the signature of such officer, as the case may be, or of some officer duly authorised to certify their orders.

(2) The declaration shall be published in the Gazette and shall state the district, taluk and village in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be, and shall not be questioned in any court of law. After making such declaration, the land may be acquired in the manner hereinafter appearing.

7. *After declaration the Collector to take order for acquisition.*—Whenever any land shall have been so declared to be needed for a public purpose or for a company, the Government or the officer making the declaration shall direct the Collector to take order for the acquisition of the land.

8. *Lands to be marked out, measured and planned.*—The Collector shall thereupon cause the land (unless it has already been marked out under section 3) to be marked out. He shall also cause it to be measured and if no plan has been made thereof a plan to be made of the same.

9. *Notice to persons interested.*—(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intend to take possession of the land and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections, if any, to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier, if any, of such land and on all such persons known or believed to be interested therein, or to be entitled

to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by registered post in a letter addressed to him at his last known residence, address or place of business.

(5) The notice shall also be published in the Gazette and shall be deemed to be sufficient notice to all persons interested in the land as between the Government and such persons.

10. *Power to require and enforce the making of statements as to names and interests.*—(1) The Collector may require any such person to make or deliver to him at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition) a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land, or any part thereof, as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits, if any, received or receivable on account thereof for three years next preceeding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

ENQUIRY INTO MEASUREMENTS, VALUE AND CLAIMS, AND AWARD BY THE COLLECTOR.

11. *Enquiry and award by Collector.*—On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections, if any, which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under sub-section (1) of section 3, and into the respective interest of the persons claiming the compensation and shall make an award under his hand of—

(i) the true area of the land;

(ii) the compensation which in his opinion shall be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

12. *Award of Collector when to be final.*—(1) Such award shall be filed in the collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

13. *Adjournment of enquiry.*—The Collector may, for any cause he thinks fit from time to time adjourn the enquiry to a day to be fixed by him.

14. *Power to summon and enforce attendance of witnesses and production of documents.*—For the purpose of enquiries under this Act the Collector shall have power to suumon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and so far as may be in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.

15. *Matters to be considered and neglected.*—In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 24 and 25.

16. *Award in case of agreement as to the amount of compensation.*—(1) If the Collector and all the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same.

(2) Such award shall be filed in the Collector's office and shall be conclusive evidence, as between the Government and all persons interested, of the value of the land and the amount of compensation allowed for the same.

TAKING POSSESSION.

17. *Power to take possession.*—When the Collector has made an award under section 11 or section 16, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

18. *Special powers in cases where land is needed urgently or is of value not exceeding Rs. 5000.*—(1) In cases where in the opinion of the Collector, the value of the land proposed to be acquired does not exceed Rs. 5,000, or in case of urgency, whenever the Government so direct, the Collector may, on the expiration of fifteen days from the publication of the notice mentioned in sub-section (1) of section 9 take possession of any land needed for public purposes or for a company though no award has been made. Such land shall thereupon vest absolutely in the Government, free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(2) In every case under sub-section (1) the Collector shall, at the time of taking possession, offer to the persons interested compensation for the standing crops and trees, if any, on such land and for any other damage sustained by them caused by such

sudden dispossession and not excepted in section 25; and in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(3) In every case under sub-section (1) the Collector may, on a request in writing by all the parties interested and on furnishing sufficient security, after such summary enquiry as he may think fit to institute and after satisfying himself that the parties are lawfully entitled to receive the compensation, pay a sum not more than 50 per cent of the probable compensation that may be finally awarded in respect of such acquisition, provided that no payment shall be made where there is a dispute as regards the person entitled to the compensation. The advance compensation paid under this sub-section shall be adjusted towards the final compensation payable under the award.

(4) In the case of any land to which, in the opinion of the Government the provisions of sub-section (1) are applicable, the Government may direct that the provisions of section 5 shall not apply, and if they do so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under sub-section (1) of section 3.

Part III.

REFERENCE TO COURT AND PROCEDURE THEREON.

19. *Reference to Court.*—(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under sub-section (2) of section 12 or within six months from the date of the Collector's award, whichever period shall first expire.

20. *Collector's statement to the Court.*—(1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand—

(a) the situation and extent of the land with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under sections 4 and 18 or either of them, and the amount of compensation awarded under section 11; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

21. *Service of notice.*—The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:—

(a) the applicant;

(b) all persons interested in the objection, except such, if any, of them as have consented without protest to receive payment of the compensation awarded; and

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

22. *Restriction on scope of proceedings.*—The scope of the inquiry in every such proceedings shall be restricted to a consideration of the interests of the persons affected by the objection.

23. *Proceedings to be in open court.*—Every such proceedings shall take place in open court and all persons entitled to practise in any civil court in the State shall be entitled to appear, plead and act, as the case may be, in such proceeding.

24. *Matters to be considered in determining compensation.*—(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

first, the market-value of the land at the date of the publication of the notification under sub-section (1) of section 3;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage, if any, sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage, if any, sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change ; and

sixthly, the damage, if any, bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value in consideration of the compulsory nature of the acquisition.

25. *Matters to be neglected in determining compensation.*—But the court shall not take into consideration—

first, the degree of urgency which has led to the acquisition ;

secondly, any disinclination of the person interested to part with the land acquired ;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit ;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put ;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put ; or

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector or the officer by whom the notification under sub-section (1) of section 3, was published after the date of the publication of the said notification.

26. *Rules as to amount of compensation.*—(1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

27. *Form of awards.*—(1) Every award under this Par shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 24 and also the amounts, if any, respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to he a decree and the statement of the grounds of every such award a judgment within the meaning of clause (2) of section 2, and clause (9) of section 2, respectively, of the Code of Civil Procedure, 1908.

28. *Costs.*—Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to he paid.

29. *Collector may be directed to pay interest on excess compensation.*—If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess of the rate of four per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

Part IV.

APPORTIONMENT OF COMPENSATION.

30. *Particulars of apportionment to be specified.*—Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

31. *Dispute as to apportionment.*—When the amount of compensation has been settled under section 11 or section 16, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

Part V.

PAYMENT.

32. *Payment of compensation or deposit of the same in Court.* (1) on making an award under section 11 or section 16, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by any one or more of the contingencies mentioned in sub-section (2).

(2) If they do not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 19 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 19:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange or in such other way as may be equitable having regard to the interest of the parties concerned.

(4) Nothing in sub-section (3) shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

33. *Investment of money deposited in respect of lands belonging to persons incompetent to alienate.*—(1) If any money is deposited in Court under sub-section (2) of section 32, and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall order the money to be invested—

(a) in the purchase of other lands to be held under like title and conditions of ownership as the land in respect of which such money has been deposited was held; or

(b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court may think fit;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied—

(i) in the purchase of such other lands as aforesaid; or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely:—

(a) the costs of such investments as aforesaid ;

(b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

34. *Investment of money deposited in other cases.*—When any money has been deposited in Court under this Act for any case other than that mentioned in section 33, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money has been deposited or as near thereto as may be.

35. *Payment of interest.*—When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of four per centum per annum from the date of so taking possession until it shall have been so paid or deposited.

Part VI.

TEMPORARY OCCUPATION OF LAND.

36. *Temporary occupation of land and payment of compensation.*—(1) Subject to the provisions of Part VII of this Act, whenever it appears to the Government that the temporary occupation and use of any land are needed for any public purpose, or for a company, the Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding five years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writng to the persons interested in such land of the purpose for which the same is needed and shall, for the occupation and use thereof for such term as aforesaid, and for the materials, if any, to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested are unable to agree as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court. The amount of compensation payable shall be an amount equal to the rent which the land would normally fetch if leased together with 5 per cent of such rent in consideration of the compulsory nature of the occupation of the land.

37. *Power to enter and take possession, and compensation on restoration.*—(1) On payment of such compensation or on executing such agreement or on making a reference under section 36, the Collector may enter upon and take possession of the land and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage if any, done to the land and not provided for by the agreement and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a company.

38. *Difference as to condition of land.*—In case the Collector and the persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

Part VII.

ACQUISITION OF LAND FOR COMPANIES.

39. *Company may be authorised to enter and survey.*—(1) The Government may authorise any officer of any company desiring to acquire land for its purposes to exercise the powers conferred by section 3.

(2) In every such case section 3 shall be construed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted; and section 4 shall be construed as if after the words "the officer" the words "of the Company" were inserted.

40. *Industrial concern to be deemed company for certain purposes.*—An Industrial concern, ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a company, desiring to acquire land for the erection of dwelling-houses for workmen employed by the concern or for the provision of amenities

directly connected therewith shall, so far as concerns the acquisition of such land, be deemed to be a Company for the purposes of this Part, and the reference to company in sections 5, 6, 7, 18 and 54 shall be interpreted as references also to a concern.

41. *Previous consent of State Government and execution of agreement necessary.*—The provisions of sections 6 to 38, both inclusive, shall not be put in force in order to acquire land for any Company unless with the previous consent of the Government, nor unless the Company shall have executed the agreement hereinafter mentioned.

42. *Previous enquiry.*—(1) Such consent shall not be given unless the Government be satisfied either on the report of the Collector under sub-section (2) of section 5 or by an enquiry held as hereinafter provided,—

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling-houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public, or

(c) that such acquisition is needed for a purpose calculated to promote and develop agriculture, industry or co-operation.

(2) Such enquiry shall be held by such officer and at such time and place as the Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure, 1908, in the case of a Civil Court.

43. *Agreement with Government.*—If the Government are satisfied, after considering the report, if any, of the Collector under sub-section (2) of section 5, or on the report of the officer making an enquiry under section 42, that the purpose of the proposed acquisition is to obtain land for the erection of dwelling-houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, or that the proposed acquisition is for a purpose calculated to promote and develop agriculture, industry or co-operation, the Government shall require the company to enter into an agreement with them providing to the satisfaction of the Government for the following matters, namely:—

(1) the payment to the Government of the cost of the acquisition;

(2) the transfer, on such payment, of the land to the Company;

(3) the terms on which the land shall be held by the Company;

(4) where the acquisition is for the purpose of erecting dwelling-houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling-houses or amenities shall be erected or provided; and

(5) where the acquisition is for the construction of any other work, the time within which, and the conditions on which, the work shall be executed and maintained and the terms on which the public shall be entitled to use the work.

44. *Publication of Agreement.*—Every such agreement shall, as soon as may be after its execution, be published in the Gazette and shall thereupon, so far as regards the terms on which the public shall be entitled to use the work have the same effect as if it had formed part of this Act.

Part VIII.

ACQUISITION OF LAND FOR IRRIGATIONAL OR ELECTRICAL PROJECTS.

45. *Provisions applicable in the case of notified projects.*—The provisions of this Part shall apply to such irrigational or electrical projects as the Government may, by notification in the Gazette, specify.

46. *Definitions.*—In this Part unless the context otherwise requires,—

(i) 'project area' means the area included in a project to which the provisions of this Chapter apply and such other area as may be notified by the Government as required for the expansion and development of that project;

(ii) 'project purpose' means any purpose connected with a project to which the provisions of this Part apply.

47. *Acquisition for project purposes.*—Whenever land is proposed to be acquired in a project area for a project purpose the provisions of this Act shall apply subject to the following modifications:—

(1) For section 11 of the Act, the following section shall be substituted, namely:—

"11. *Enquiry and award by Collector.*—On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections, if any, which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, into the market-value of the land on the date of the sanction of the project concerned and the value of an improvements to the land effected after that date and before the date of the publication of the notification under sub-section (1) of section 3, into the value of the land at the date of the publication of the notification under sub-section (1) of section 3, and into the respective interests of the persons claiming the compensation and shall make an award under his hand of—

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believe to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him."

(2) In sub-section (1) of section 24 of the Act, for clause first, the following clause shall be substituted, namely:—

"first, the market-value of the land on the date of the sanction of the project concerned and the value of any improvements to the land effected after that date and before the date of the publication of the notification under sub-section (1) of section 3 or the market-value of the land on the date of the publication of the said notification, whichever is less;"

Part IX.

MISCELLANEOUS.

48. *Service of notices.*—(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 3, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him, and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the Office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired:

Provided that if the Collector or Judge shall so direct, a notice may be sent by registred post, in a letter addressed to the person named therein at his last known residence, address or place of business and service of it may be proved by the production of the addressee's receipt.

49. *Penalty for obstructing acquisition of land.*—Whoever wilfully obstructs any person in doing any of the acts authorised by section 3 or section 8, or wilfully fills up, destroys, damages or displaces any trench or mark made under section 3, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

50. *Magistrate to enforce surrender.*—If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land

to himself, and, if not a Magistrate, he shall apply to a Magistrate and such Magistrate shall enforce the surrender of the land to the Collector.

51. *Completion of acquisition not compulsory, but compensation to be awarded when not completed.*—(1) Except in the case provided for in section 37, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraw from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

52. *Acquisition of part of house or building.*—(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired:

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired:

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does, or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court, and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under sub-section (1) of section 24 *thirdly*, by a person interested, on account of the severing of the land to be acquired from his other land, the Government are of opinion that the claim is unreasonable or excessive, they may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case provided for in sub-section (2) no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the Government to the person interested, and shall thereafter proceed to make his award under section 11.

53. *Power to continue the proceedings started by another Collector.*—Any Collector who has started proceedings under the Act for the acquisition of land may, on the appointment of any other officer by Government to perform the functions of a Collector under the Act for the acquisition of the same land make over the proceedings to the officer so appointed and the officer so appointed may continue the proceedings from the stage at which the former left it, as if the proceedings had been started by him.

54. *Acquisition of land at cost of a local authority, or company.*—(1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or company shall be entitled to demand a reference under section 19.

55. *Exemption from stamp-duty and fees.*—No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

56. *Notice in case of suits for anything done in pursuance of Act.*—No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

57. *Establishment of Land Acquisition Courts.*—(1) Government may, by notification in the Gazette, establish Land Acquisition Courts at any place or places in the State.

(2) When a Land Acquisition Court has been established under sub-section (1) a Judicial Officer not below the rank of a subordinate Judge shall be appointed as judge of the court by notification in the Gazette.

(3) The local limits of the Jurisdiction of the Land Acquisition Courts and the pecuniary limits of the Jurisdiction of such Courts shall be such as the Government may, by notification in the Gazette, fix.

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3) the Government may, by notification in the Gazette, invest any Civil Court with the jurisdiction of a Land Acquisition Court subject to such territorial and pecuniary limits of jurisdiction as may be specified in the notification.

58. *Code of Civil Procedure to apply to proceedings before Court.*—Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act.

59. *Appeals in proceedings before Court.*—Appeals shall lie from the award or from any part of the award of the Court as if the award or part of the award is a decree passed by a Civil Court under the provisions of the Code of Civil Procedure, 1908, and subject to such rules as may be prescribed.

60. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules consistant with this Act for the guidance of officers in all matters connected with its enforcement.

(2) All rules made under this section shall be laid before the Legislative Assembly of the State for not less than seven days, as soon as possible after they are made and shall be subject to such modifications, whether by way of repeal or amendment, as that Assembly may make during the session in which they are so laid, or in the session immediately following.

61. *Repeal.*—The Travancore Land Acquisition Act, (Travancore Act XI of 1089) and the Cochin Land Acquisition Act, II of of 1070 are hereby repealed and the Land Acquisition Act, 1894 (Central Act I of 1894) shall cease to apply to the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956.

STATEMENT OF OBJECTS AND REASONS.

The law relating to compulsory acquisition of land in force in the Travancore and Cochin areas of the State are contained in the Land Acquisition Act, 1089 (Travancore) and the Land Acquisition Act, 1070 (Cochin) respectively. In the Malabar area of the State the law on the subject is contained in the Land Acquisition Act, 1894 (Central Act I of 1894). It is considered necessary to have a uniform legislation on the subject applicable to the whole of the State of Kerala. The Bill is intended to achieve this object.

Financial Memorandum.

Clauses 4, 32 and 36 provide for payment of compensation for damages and for acquisitions. It is obvious that the expenditure involved in this regard cannot be estimated with any amount of precision or accuracy. Clause 57 of the Bill provides for the establishment of Land Acquisition Courts and for appointment of Judicial Officers not below the rank of Subordinate Judges as Judges of those Courts. This clause if enacted and brought into operation would involve expenditure from the Consolidated Fund of the State. As the probable number of courts that may be established and the number of Judges that may be appointed cannot be correctly estimated it is not possible to estimate with any amount of accuracy the expenditure involved on this account.

K. R. GOURI.